

Public Service Company
of New Mexico
Alvarado Square, MS-0806
Albuquerque, NM 87158
505 241-4903
FAX 505 241-2338

Sarah D. Smith
General Attorney

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June 24, 1997



Electric Services

Dorothy Conway
Federal Communications Commission
1919 M Street, N.W., Room 234
Washington, D.C. 20054

Via Federal Express

Re: **Amendment of Rules and Policies**
Governing Pole Attachments
CS Docket No. 97-98
Initial Comments of
Public Service Company of New Mexico

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INFORMATION RESOURCES
BRANCH

Dear Ms. Conway:

Enclosed for filing are two copies of the Initial Comments of Public Service Company of New Mexico in the above-referenced proceeding.

Please conform and return a date-stamped copy in the enclosed self-addressed, stamped envelope.

Thank you.

Sincerely,

Sarah D. Smith
General Attorney, Electric Services
Public Service Company
of New Mexico
Alvarado Square, Mailstop 0806
Albuquerque, New Mexico 87158

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Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of
Rules and Policies
Governing Pole Attachments

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CS Docket No. 97-98

**INITIAL COMMENTS OF
PUBLIC SERVICE COMPANY OF NEW MEXICO**

Dated: June 27, 1997

SUMMARY

The FCC should rely on negotiations and market forces to set pole attachment rates. The FCC must not develop any rate formula that imposes rates lower than the rates that have resulted from voluntary negotiations, especially if that requires the abrogation of existing contracts. Any rate formula established by the Commission should be based on the full recovery of all replacement costs, as only this approach satisfies reasonable expectations about the value of infrastructure investments. The proposed formula does not adequately provide for the recovery of past costs, or replacement costs.

Public Service Company of New Mexico (“PNM”) is opposed to the creation of a pole attachment rate for transmission facilities or rights-of-way. PNM takes the position that transmission facilities and rights-of-way are not properly part of the scope of this proceeding. Similarly, the Commission’s proposal is completely inappropriate for application to attachments of wireless equipment.

Utilities must be allowed to recover costs on a forward-looking basis. If the FCC imposes a rate formula, it should not attempt to create more than one. Nonetheless, a utility must be permitted to deviate from that formula upon a prima facie showing that its circumstances warrant different treatment.

Recognizing that electric utility ducts and conduit are substantially different from telecommunications ducts and conduit, the FCC should clarify what is meant by those terms, at least as they apply to electric utilities. Electric utility underground facilities are subject to rigid safety requirements that strictly limit the ability to engage in joint use for

both power and communications purposes. This restriction makes the FCC's "half-duct convention" inappropriate for electric utilities.

While the joint use of distribution poles is traditional, the FCC's approach to cost recovery seriously under reflects actual pole costs. In particular, "safety space" is not used by utilities, and is not necessarily limited to 40 inches. Moreover, various appropriate methods exist for allocating safety space to attaching entities.

INTRODUCTION

Public Service Company of New Mexico (“PNM”), by its attorney and pursuant to Section 533 of the Administrative Procedure Act, 5 U.S.C. §553 (1994) and the Commission’s Notice of Proposed Rulemaking (the “Rate NPRM”) in the above-captioned docket released March 14, 1997, hereby submits its Comments.

PNM is a combined electric and gas utility serving 1.2 million people in more than 100 communities around the State of New Mexico. PNM owns many thousands of distribution poles and controls numerous ducts, conduits, and rights-of-way, all of which are part of its core infrastructure by which it provides electric service. PNM accordingly has a vital interest in the outcome of this proceeding.

The Rate NPRM seeks comment on proposed changes to the Commission’s rules relating to the maximum just and reasonable rates utilities may charge for attachments made to a pole, duct, conduit or right-of-way under Section 224(d) of the Communications Act of 1934 (the “1934 Act”) as amended by the Telecommunications Act of 1996 (the “1996 Act”) (referred to together as “the Act”). Pursuant to Section 224(d)(3), the Commission’s proposed rate formulations would apply to telecommunication carriers, as well as to cable companies, pending the promulgation of the new rate formula for telecommunications carriers required under Section 224(e) of the Act. PNM’s comments are directed towards the proposed rate formulations as they would apply to electric utilities that own poles, conduits and right-of-ways.

DISCUSSION

PNM has been monitoring the position of The Edison Electric Institute (“EEI”) and UTC, The Telecommunications Association (“UTC”) and shares the concerns expressed in their comments filed in this proposed rulemaking. In addition to sharing the position of EEI and UTC, PNM would like to particularly emphasize a few of its concerns regarding this proposed rulemaking.

Transmission Structures. Transmission structures should not be included in the development of a pole attachment formula. Existing joint-use arrangements with Local Exchange Carriers (“LECs”), in particular, have never covered transmission structures. Distribution structures are the primary facilities sought after by LECs. In addition, PNM opposes applying a pole attachment rate to transmission structures. In Section II, Paragraph 5 of the Rate NPRM the FCC states that “. . . the formula proposed in this Notice will apply to attachments on poles, within ducts, conduit or rights-of-way . . .”. That language implies that the FCC intends its proposed interim pole attachment formula to have wider impact than just to distribution structures. The FCC’s proposed interim formula is unable to adequately reflect the costs of transmission structures and rights-of-way. The proposed formula is an inappropriate starting point and it bears no relationship to the high costs of installing and maintaining transmission structures. PNM believes that even if transmission structures were included, they should be based on individual utility costs.

Wireless Attachments. Wireless attachments should not be included in the development of a pole attachment formula. Utilities hold no monopoly on structures, facilities, or sites suitable for wireless installations. The appropriate rates for wireless attachments or installations should be determined by the market.

Pole Attachment Rates. Pole attachment rates should be based on full replacement cost rather than net cost. This allows for a more equitable recovery of costs. In lieu of full replacement costs, utilities should be allowed to develop pole attachment rates using market rates or other forward-looking methodologies or permit utilities to conduct cost studies to support the allocation factors they may individually use or propose. Embedded cost recovery does not track all real costs and expenses associated with poles such as pole disposal costs, increased liability and reliability costs.

Half-Duct Convention. The FCC's "half-duct convention" is not appropriate for electric utilities because of strict NESC restrictions on when supply and communications cables can be in the same duct. Use of a duct for communications cable may well preclude any use by a utility for power supply purposes. The unoccupied space within a duct is "used" by the communications conductor. That space is no longer available for use by the utility and therefore the attaching entity should pay the full linear cost per duct. In addition, the first attaching entity should pay the entire cost of the installation and the interducting. PNM recommends the sharing of this cost between attaching entities when more than one is present in the same duct.

Duct/Conduit Rates. In the development of duct/conduit rates, PNM supports the use of market-based rates rather than formula-based rates due to the installation cost variations that are location dependent.

Pole Height. The average pole height should be increased to at least 40 feet. PNM's minimum pole height for normal distribution is 40 feet. Because of the increasing numbers of entities wishing (and now entitled) to attach to utility poles, the average height of poles used for telecommunications (and cable) attachments is now at least 40 feet. A preferred alternative would be to allow utilities the option to conduct studies to ascertain their average pole height and associated expenses.

Forty-inch Safety Space. The 40-inch safety space should be treated as unusable or common space. The safety space was created by the NESC for the safety of communications workers, not utility workers, since communications workers do not have training for high voltage equipment. The safety space is in fact unusable by the utility because it cannot be used for the attachment of utility cables down a line of poles (horizontal wire). Utilities only build poles in order to string horizontal wire and if they cannot do so, they effectively cannot use the pole. The 40-inch safety space is not required if LECs are not allowed to attach to poles.

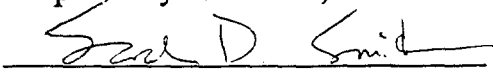
CONCLUSION

The intent of Congress in passing the 1996 Telecommunications Act was to foster competition in all telecommunications markets. In removing barriers to such increased competition, Congress did not intend to promote it by requiring facility owners,

particularly utilities and their customers, to subsidize the entry of new participants into those markets.

The FCC must not impose regulation where those markets are vigorous. Those markets must be allowed to efficiently allocate resources and determine value. The FCC must recognize and honor pre-existing contractual agreements and it must allow facility owners to recover all expenses related to the provision of facilities for attachment by telecommunications companies' equipment.

Public Service Company of New Mexico respectfully requests the Federal Communications Commission to take action in this proceeding in accordance with the views expressed by it in these comments.

Respectfully submitted,
By: 
Sarah D. Smith
General Attorney, Electric Services
Public Service Company
of New Mexico
Alvarado Square, Mailstop 0806
Albuquerque, New Mexico 87158
505/241-4903